

Memorandum

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Telephone: ATSS ()
(916) 654-4075

To : Vice Chair David A. Rohy
Commissioner Michal C. Moore

File: 98-AFC-1

From : California Energy Commission - Lorraine White
1516 Ninth Street Project Manager
Sacramento, CA 95814-5512

Subject : **Staff Comments on the Presiding Member's Proposed Decision for the Pittsburg District Energy Facility**

On June 30, 1999, the Presiding Member's Proposed Decision (PMPD) was issued for the Pittsburg District Energy Facility, 98-AFC-1. California Energy Commission staff and other formal parties to the proceeding were directed to submit their comments on the PMPD no later than July 16, 1999. The comments period on the PMPD ends on July 30, 1999. Attached are staff's comments on the PMPD for the Pittsburg District Energy Facility.

Attachment

cc: Proof of Service

STAFF COMMENTS ON THE PRESIDING MEMBER'S PROPOSED DECISION FOR THE PITTSBURG DISTRICT ENERGY FACILITY (98-AFC-1)

SUMMARY OF STAFF'S COMMENTS

The California Energy Commission staff appreciates the opportunity to provide the Committee with our comments on the Presiding Member's Proposed Decision (PMPD) on the proposed Pittsburg District Energy Facility (PDEF), 98-AFC-1. Specifically, our comments address the deletion of the Truck Bypass Road from the project description and changes we believe are necessary to ensure clarity and enforceability of the Conditions of Certification if the Commission approves the proposed power plant.

DELETION OF THE TRUCK BYPASS ROAD

In the Application for Certification (AFC), Enron Corporation proposed the construction of a Truck Bypass Road, in part, to mitigate the potential truck-traffic related impacts. Staff in its analysis of the project, included the Truck Bypass Road and associated features (a sound wall, linear park, road overpass and the relocation of a baseball field) as part of the project. Staff agreed with the applicant that the road would provide mitigation for truck-traffic related impacts, the sound wall would be needed to mitigate for traffic noise associated with the road, the linear park would mitigate the visual impacts of the wall, the ball field would have to be moved to allow for construction of the road and the overpass would have to be constructed to allow for pedestrian access to the ball field.

In the introduction of its PMPD, the Committee stated that the Truck Bypass Road is deleted from the project description concluding it "is a local matter between the City of Pittsburg, Enron and the residents of Pittsburg's Central Addition neighborhood. However, the Committee is requiring that the 12-foot tall sound wall and the linear park be constructed. In other sections of the PMPD, however, the text continues to discuss the construction of the road and, in addition to the sound wall and the linear park, the requirement to relocate the ball field and construct the overpass (i.e., Project Description [page 9], and Land Use [pages 5&6]). These discussions confuse the actual requirements being imposed by the Committee and should be deleted.

Without the inclusion of the Truck Bypass Road in the project, staff does not believe the record supports the requirement that the applicant build the sound wall or the linear park. For example, Energy Commission staff, in the visual analysis, evaluated the wall as part of the project, not as a mitigation measure. Potential impacts without the wall were not evaluated, so the need for the wall as mitigation was not evaluated. Furthermore, staff's analysis does not support the sound wall as mitigation for noise impacts related to the power plant.

If the Truck Bypass Road was approved, the wall, linear park, overpass and relocation of the ballfield are needed mitigations associated with impacts of the road, not the power plant or any of its associated transmission facilities or pipelines.

Staff concurs that if visual impact were to be identified as a result of an analysis, the sound wall along Sante Fe Avenue would provide a more complete and immediate visual screen of the power plant for residences with northern views than simply requiring a linear park. However, staff does not believe the record supports the construction of the sound wall and linear park behind residents on Columbia Street to mitigate any impacts associated with the power plant or the remaining linear facilities.

SPECIFIC CORRECTIONS TO SECTIONS OF THE PMPD

The following comments are organized to coincide with the format of the PMPD.

INTRODUCTION

Page 2. The PMPD states that “Condition of Certification TRANS-1 is amended to require construction of the 12-foot sound wall and appropriate landscaping to mitigate project-related visual and noise impacts. It does not require PDEF to build the Truck Bypass Road.” However, the sound wall is not required mitigation for power plant noise impacts, only those caused by the road. Nor does the record contain evidence that the sound wall is required to mitigate project-related visual impacts. Energy Commission staff and the applicant evaluated the wall as part of the project, not as a visual mitigation measure. The impact without the wall was not evaluated, so the need for the wall as mitigation was not evaluated. If an analysis were to show visual impacts to residences along Sante Fe Avenue from the power plant, a wall could provide a more complete and immediate visual screen of the power plant than simply requiring a linear park. At a minimum the third paragraph should be changed to read: “...to mitigate project-related visual impacts.”

SECTION I – PROJECT DESCRIPTION

Page 1, third paragraph. The first sentence should end “...with a shared steam turbine generator.”

Page 9, last paragraph. This indicates the Truck Bypass Road is part of the project. This is in contradiction to the Introduction, page 2, second paragraph and page 7, first paragraph, which indicate the Truck Bypass Road is not part of the project.

SECTION II – NEED CONFORMANCE

No comments.

SECTION III – PROJECT ALTERNATIVES

No comments.

SECTION IV – COMPLIANCE

No comments.

SECTION V – FACILITY AND ENGINEERING ASSESSMENT

POWER PLANT RELIABILITY

Page 2, paragraph “4. Natural Hazards”: In the third line, the sentence should end “...at an elevation of 12 feet above mean sea level (MSL).”

TRANSMISSION SYSTEM ENGINEERING

Page 2, paragraph 2. The description for the location of the double circuit line is incorrect. Staff’s supplemental testimony dated April 12, 1999 clarified that the line will be located under the east bound lane of 8th Street, not in the median railroad right-of-way.

SECTION VI – PUBLIC HEALTH AND SAFETY ASSESSMENT

AIR QUALITY:

Page 1, third paragraph. The PMPD indicates that the Bay Area Air Quality Management District’s (BAAQMD) jurisdiction is in attainment for the ozone (O₃) 1-hour federal standard. This assertion is incorrect. The area under the jurisdiction of the BAAQMD is non-attainment for the 1-hour federal ozone standard. Because ozone is believed to be a regional problem, the designation is made based on measurements taken anywhere in the BAAQMD’s jurisdiction. In this case, this designation is mostly due to high concentrations measured in the Livermore and San Jose areas.

Page 8, Table 4. The BAAQMD banked the emission reductions credits generated by the Quebecor Printing and Owens-Brockway facilities on June 2 and June 10 of this year, respectively. Table 4 should identify them as banked emission reduction credits.

Page 10, Table 6. Table 6 should include a comment that a very small amount of PM₁₀ emissions may be generated from the cooling towers. The maximum worst case emissions would be about 10 lb/day and 2 tons per year.

Page 11, first paragraph, “8. Truck Bypass Road” – This discussion is no longer relevant with the deletion of the Truck Bypass Road from the project description and should be deleted.

Page 14, bullet 3. The San Francisco Bay Area air basin is a non-attainment area for the O₃ federal 1-hour ozone standard (see discussion for Air Quality, Page 1, above). Please delete O₃ from this list.

Page 37, Condition AQ-50. Delete “this facility”, and insert “the Pittsburg District Energy Facility”.

Page 38, Condition AQ-52. The word “minimum” in the third paragraph should be changed to “maximum.” The maximum guarantee drift rate of 0.0005% will indicate that the drift rate can not be greater than 0.0005% which was the original intention of AQ-52.

Page 2, Appendix A: LORS. Appendix A should indicate that the Final Determination of Compliance (DOC) contains an in-depth discussion of how PDEF will comply with all applicable rules and regulations and should eliminate any reference to the Preliminary DOC.

WORKER HEALTHY AND SAFETY

Staff testimony included necessary conditions of certification to ensure the protection of workers and proper fire protection. Restore the following text to the Conditions of Certification after the “...of the proposed Operation Safety and Health Plan.” on page 6:

“The project owner shall notify the CPM that the Project Operation Safety and Health Program (Injury and Illness Prevention Plan, Fire Protection Plan, the Emergency Action Plan, and Personal Protective Equipment requirements), including all records and files on accidents and incidents, is present on-site and available for inspection.

WORKER SAFETY-3 The project owner shall design and install all exterior lighting to meet the requirements contained in the Visual Resources conditions of certification and in accordance with the American National Standards Practice for Industrial Lighting, ANSI/IES-RP-7.

Verification: Within 60 days after construction is completed, the project owner shall submit a statement to the CPM that the illuminance contained in ANSI/IES RP-7 were used as a basis for the design and installation of the exterior lighting.”

SECTION VII – ENVIRONMENTAL ASSESSMENT

BIOLOGICAL RESOURCES

Page 2, at the end of the 1st paragraph, insert:

“The applicant proposed and staff agreed with measures that ensure the protection of biological resources, specifically wetland areas in close proximity to linear facilities. These measures are necessary during construction to avoid inadvertent impacts to these resources. Therefore, staff recommended inclusion

of these measures in the Biological Resources Mitigation Implementation and Monitoring Plan that is required as a Condition of Certification."

On page 11, after the last entry under the Protocol for BIO-5, insert the following:

- "clearly delineate construction area boundaries with stakes, flagging, and/or rope to minimize inadvertent degradation or loss of wetland habitat during construction activities associated with pipelines and transmission lines, and show all locations requiring temporary protection/signs during construction on a map of suitable scale."

Page 13, Condition BIO-7. This text is actually a part of the requirements contained in BIO-6 of staff's recommended conditions, not a separate condition. Staff and the applicant mutually agreed to delete staff's original BIO-7 after staff determined that a Streambed Alteration Permit would not be required if the project is constructed as proposed. Please return condition BIO-6 to its proper form as proposed by staff to ensure clarity and enforceability. The condition, in its entirety, should read as follows:

"BIO-6 Site disturbance and project construction shall not commence until the project owner has developed a protocol for inclusion in a Biological Resources Mitigation Implementation and Monitoring Plan to monitor for bird mortality due to collision with the stacks on the project site as well as the transmission lines. Mortalities associated with transmission lines shall, to the extent possible, be identified as to whether the cause is electrocution or collision with towers or conductors. The protocol shall include a thorough description of methods for collecting and recording this data.

As part of this protocol, a report describing the results after each year of monitoring shall be submitted to the CPM on the next closest annual report date established for the project in this decision. If the CPM determines that the report content or format requires changes, the project owner shall modify the report based on the CPM's comments.

If bird mortalities are documented as a result of the monitoring, the project owner shall recommend and, if deemed necessary and acceptable by the CPM, implement mitigation measures to reduce the mortalities. If no significant bird mortalities are documented within a 3-year period, the bird monitoring program may be ended with concurrence of the CPM.

Verification: The CPM will review the Biological Resources Mitigation Implementation and Monitoring Plan submitted under condition of certification **BIO-5**. If the Biological Resources Mitigation Implementation and Monitoring Plan does not include the monitoring protocol listed above, the CPM will return the plan within 14 days to the project owner for revision. During operation of the project, the CPM or designee will determine via telephone or through visits to the project site, as deemed necessary, whether or not the project owner has complied with this condition.

The CPM will review each monitoring report and, as deemed necessary, ask the project owner to modify and/or clarify the report content and/or format.

If the project owner has not complied with any aspect of this condition, the CPM will notify the project owner of making this determination. If the project owner fails to correct any identified problem within a reasonable time, as determined by the CPM, the CPM will initiate the Energy Commission's complaint filing process.

For any necessary corrective action taken by the project owner, a determination of success or failure of such action will be made by the CPM after receipt of notice that corrective action is completed, or the project owner will be notified by the CPM that coordination with other agencies will require additional time before a determination can be made." **(end of condition)**

PALEONTOLOGY

Page 4, PAL-2 should read as follows:

PAL- 2: ~~At least ten (10) days prior to the termination or release of a designated paleontological resource specialist, the project owner shall obtain CPM approval of the replacement specialist by submitting to the CPM the name and resume of the proposed new designated paleontological resource specialist. Should emergency replacement of the designated specialist become necessary, the project owner shall immediately notify the CPM to discuss the qualifications of its proposed replacement specialist.~~

Prior to the start of project construction, the designated paleontological resource specialist shall prepare a draft Paleontological Resources Monitoring and Mitigation Plan to identify general and specific measures to minimize potential impacts to sensitive paleontological resources. The CPM will review and must approve in writing, the Paleontological Resources Monitoring and Mitigation Plan. After CPM approval, the project owner's designated paleontological resource specialist shall be available to implement the Monitoring and Mitigation Plan, as needed throughout project construction.

PROTOCOL: The Paleontological Resources Monitoring and Mitigation Plan shall include, but not be limited to, the following elements and measures:

- A discussion of the sequence of project-related tasks, such as any pre-construction surveys, fieldwork, flagging or staking; construction monitoring; mapping and data recovery; fossil preparation and recovery; identification, and inventory; preparation of final reports, and transmittal of materials for curation.
- An identification of the person(s) expected to assist with each of the tasks identified in (a), above, and a discussion of the mitigation team leadership and organizational structure, and the inter-relationship of tasks and responsibilities.

- Where monitoring of project construction activities is deemed necessary, the extent of the areas where monitoring is to occur and schedule for the monitoring.
- The designated paleontological resource specialist shall have the authority to halt or redirect construction in the immediate vicinity of a vertebrate fossil find until the significance of the find can be determined.
- A discussion of equipment and supplies necessary for recovery of fossil materials and any specialized equipment needed to prepare, remove, load, transport, and analyze large-sized fossils or extensive fossil deposits.
- Inventory, preparation, and delivery for curation into a retrievable storage collection in a public repository or museum, which meets the "Society of Vertebrate Paleontologists" (SVP) standards and requirements for the curation of paleontological resources.
- Identification of the institution that has agreed to receive any data and fossil materials recovered during project-related monitoring and mitigation work. Discussion of any requirements or specifications for materials delivered for curation and how they will be met. Also include the name and phone number of the contact person at the institution.

Verification: At least sixty (60) days prior to the start of construction on the project, the project owner shall provide the CPM with a copy of the Monitoring and Mitigation Plan prepared by the designated paleontological resource specialist. The CPM shall provide written approval or disapproval of the proposed Paleontological Resources Monitoring and Mitigation Plan within 15 days of receipt of the submittal. If the plan is not approved, the project owner, the designated paleontological resources specialist, and the CPM shall meet to discuss comments and work out necessary changes.

SECTION VIII – LOCAL IMPACT ASSESSMENT

LAND USE

At the May 4 hearing on Land Use, Mr. Allan Thompson asked staff to clarify that the language of LAND-4 did not mean to suggest that only PDEF was to build the 8th Street linear park, but that it would be a "joint venture or joint effort" by PDEF and the Delta Energy Center (DEC). Staff agreed and stated that a similar condition would be proposed for the DEC.

In response, the Committee has revised the language of LAND-4 to read that the project owner shall construct the park "in coordination with the Delta Energy Center." Staff believes that this language is too vague, and should read instead "in a joint effort with the Delta Energy Center." This is the language staff will propose in the Preliminary Staff Assessment for the DEC Project.

TRAFFIC AND TRANSPORTATION

Page 11. Delete **TRANS-1**. As stated above, staff does not agree that the record supports the requirement to construct the sound wall as originally proposed by the applicant to mitigate visual and noise if the Truck Bypass Road is not part of the project description. Potential impacts without the wall were not evaluated, so the need for the wall as mitigation was not evaluated. If a wall is required, it would be appropriate to put such a condition in the Visual Resources section, not the Traffic and Transportation section.

VISUAL RESOURCES

Page 3, first full paragraph, line 4. Before “transmission poles”, insert “most” and before “the power plant itself”, insert “almost all views of.” Approximately half of the transmission pole nearest Santa Fe Avenue would be visible above the sound wall, if it is required and the second floor view of the power plant from one residence would not be blocked by the sound wall.

Page 8, Finding 6. Change “will block views of the project and transmission lines at residences” to “will block almost all views of the power plant and will block most transmission poles from view at residences” (see the previous comment).

Page 9, Condition **VIS-1** (and all others). Align the condition number with the left margin to clarify that the verification is part of the condition.

Page 9, Condition **VIS-1**, paragraph 2, line 1. Underline “Protocol.”

Page 12, Condition **VIS-4**. Consistent with the above discussions about the deletion of the Truck Bypass Road from the project description, and the lack of analytical support in staff’s testimony for the construction of the wall without the road, this condition should be deleted. If the Committee persists in their requirement for the wall, staff recommends the following change to the condition be made, and the protocol and verification for this condition be retained unaltered:

“The project owner shall construct a soundwall along Sante Fe Avenue between Harbor and Columbia Streets, and implement a treatment plan for the sound wall and the strip of land between the wall and road. The wall shall be completed no later than three months after the start of construction on the PDEF, with the landscaping completed during the next planting season. The objective of the treatment plan shall be to minimize visual impacts and to maximize the potential for community benefit.”

Page 13, Condition **VIS-5**, paragraph 2, line 1. Insert “Protocol.” at the beginning of the paragraph.

Page 14, Condition **VIS-7**, **Verification**. Change “installing the screening” to “restoring the landscaping.”

Page 16, Condition **VIS-9**, paragraph 2, line 1. Underline "Protocol."

Page 16, Condition **VIS-9**, item 1, line 1. Before "proposed" insert "a detailed landscaping plan, at a readable scale, which includes a list of."

Noise

Page 4, fourth paragraph, third line. Delete the word "residential."

Page 6, paragraph numbered 3. The sentence should begin, "As a baseload project,..."

Page 6, paragraph numbered 4. Delete the word "industrial."

Page 10, the paragraph following the box should begin with: "**Verification**:"